

**Irwin Industries, Inc. and Nolan J. Detroit
International Union of Petroleum and Industrial
Workers, SIUNA, AFL-CIO and Lauraine
Louise Smith.** Cases 21-CA-25437 and 21-CB-
9938

August 15, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND RAUDABAUGH

On May 3, 1989, Administrative Law Judge William J. Pannier III issued the attached decision. The General Counsel filed exceptions and a supporting brief and the Respondent Union and the Respondent Employer each filed a brief in opposition. The Respondent Union and the Respondent Employer each filed cross-exceptions and supporting briefs, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order and to adopt his recommended Order as modified and set forth in full below.

The judge dismissed complaint allegations that Respondent Irwin Industries (Irwin) violated Section 8(a)(2) of the Act and the Respondent Union violated Section 8(b)(1)(A) when Irwin granted recognition to the Union on April 6, 1987. On the basis of those dismissals, the judge also dismissed the 8(a)(3) and 8(b)(1)(A) allegations concerning the Respondents' inclusion of a union-security clause in their May 15, 1987 collective-bargaining agreement. For the reasons set forth below, we find, contrary to the judge and in agreement with the exceptions of the General Counsel, that, because of a lack of continuity in the appropriateness of the bargaining unit, a presumption of continuing majority status may not be applied. Thus, the Respondent Union's failure to demonstrate that it represented a majority of Irwin's employees in an employerwide, multilocation refinery maintenance unit requires us to find violations as to (1) Irwin's grant of recognition to the Union and the Union's acceptance of that recognition, and (2) the inclusion of a union-security clause in the resulting collective-bargaining agreement.¹

¹ Assuming, *arguendo*, that it was lawful to recognize the Union and include a union-security clause in the resulting contract, we adopt the judge's finding that Irwin violated Sec. 8(a)(2) and (3) by checking off dues pursuant to authorization cards obtained by unlawful threats and doing so before the expiration of 8(a)(3)'s 30-day grace period, we also adopt the judge's finding that Irwin's subsequent notice to employees did not serve as an effective repudiation of those unfair labor practices. In addition we adopt the judge's findings

We begin by summarizing the relevant facts in this case as set out by the judge, supplemented by record evidence not described in his decision. Respondent Irwin provides maintenance services to refineries. In July 1986, Irwin bid on contracts for Chevron's El Segundo refinery and Texaco's Wilmington refinery. At that time Irwin was already performing some of the work at Chevron, along with contractors Stockmar, Diversified, and Pem West.² Stockmar was awarded each contract and, following a transition period during which it picked up the employees of the other employers, it began performing under the new contracts on October 1. At some point during or after the transition period, Stockmar, which was party to a multiemployer collective-bargaining agreement with the Union, extended that agreement to cover the employees at both of its new locations.

At that point, Stockmar had maintenance contracts covering approximately 50 refinery, industrial, and powerplant facilities and employed approximately 800 unit employees. Approximately 10 of these facilities were refineries. Of the approximately 700 refinery maintenance employees, almost one-half were employed at Chevron (193) and Texaco (144). The record is silent as to the number of employees and locations associated with the other two employers (Bay Western Industrial Maintenance and Northwestern Industrial Maintenance) in the multiemployer association.

On December 10, 1986, Stockmar notified both Chevron and Texaco that it could no longer continue performing under the contracts. Irwin then replaced Stockmar at each of these two facilities and began performing all maintenance work on December 11, using the same employees employed by Stockmar on the previous day. The Union, claiming to represent a majority of Irwin's refinery division employees, immediately demanded recognition as the bargaining representative for all such employees—the 337 employees at Chevron and Texaco, as well as 228 previously unrepresented employees working at approximately 7 other refineries pursuant to preexisting maintenance contracts. Sixty percent of Irwin's total work force on December 11 consisted of former Stockmar employees. The former Stockmar employees at Chevron and Texaco, now employed by Irwin, continued in the same job classifications at the same pay, doing the same work with the same equipment and with the same immediate supervision as under Stockmar.

However, in addition to these aspects of continuity in terms and conditions of employment, Irwin inte-

that the Union violated Sec. 8(b)(1)(A) by accepting checked-off dues after being on notice that they had been deducted pursuant to coerced authorizations and that its notice to employees likewise did not constitute an effective repudiation.

² There is no evidence as to which contractors had been providing maintenance services at Texaco in July 1986, although Irwin had performed some of the work there at various times.

grated operations at the Chevron and Texaco facilities into its own highly centralized labor relations structure. All hiring is done through Irwin's central office and final authority to fire employees is located there as well. The former Stockmar employees received the same employee handbook and safety manual issued to all other new Irwin employees and they were now subject to transfer to other Irwin locations. As found by the judge, all of Irwin's labor relations policies are formulated by management officials in the main office. In fact, all parties to this proceeding agreed that the only appropriate bargaining unit since Irwin took over Stockmar's operations is a multiplant employerwide unit consisting of all refinery maintenance employees.

Irwin's recognition of the Union in the requested employerwide unit was granted on April 6, 1987.³ It was based on the following three assumptions shared by the parties: (1) that Irwin held "successorship" status at Chevron and Texaco; (2) that the overall unit was appropriate for collective bargaining under Section 9(b) of the Act; and (3) that on the date of the original request for recognition, December 11, 1986, the former Stockmar employees at Chevron and Texaco, who then outnumbered the unrepresented employees in Irwin's preexisting work force, continued to be represented by the Union.

The judge, in addressing the complaint allegation that the Union did not, at the relevant times, represent a majority of Irwin's employees, phrased the "crucial issue" as follows: what was the effect on the Union's representation rights when the maintenance employees at the Chevron and Texaco facilities were transferred from Stockmar's multiemployer unit to the Irwin employerwide unit, which included previously unrepresented employees? The General Counsel argued that this transfer terminated the Union's right to rely on any continuing presumption of majority status and that accordingly the Union was obliged to affirmatively demonstrate its majority status as of April 6, 1987. The judge rejected this contention, citing principles of successorship and merger of units. He accordingly dismissed the allegation concerning unlawful recognition.

Although we agree with the judge's formulation of the issue, we find merit in the General Counsel's exceptions and accordingly find the violations alleged. We begin with the judge's finding that the General Counsel did not demonstrate a basis for concluding that Irwin was *not* a successor to Stockmar with respect to the employees at the Chevron and Texaco facilities. In this regard we stress the importance of the

judge's failure to appreciate the import of what he correctly termed an "undisputed" fact—the former Stockmar employees, acquired from the multiemployer unit on December 10, 1986, did *not* constitute, by themselves, an appropriate unit for collective bargaining between Irwin and the Union. This being so, we find no ground on which to rest a presumption of majority status for the Union.

It is not sufficient to find, as did the judge, that the unit in which bargaining was requested, i.e., *all* Irwin's maintenance employees (former Stockmar employees and its existing unrepresented work force), was appropriate. It is well established under the Board's successorship doctrine that, in order to establish the condition precedent for presuming continued majority support, the employees acquired from a predecessor *themselves* must constitute an appropriate unit.⁴

In particular, we disagree with the judge's reliance on *Spruce Up Corp.*, 209 NLRB 194 (1974), for the proposition that an appropriate unit can be created by merging a smaller number of unrepresented employees with a larger number of acquired employees who were represented when employed by a predecessor. In *Spruce Up* the successor took over 19 represented barbershops which constituted an appropriate unit on the basis of the union's certification. The Board found that the addition of employees from eight unrepresented shops "did not destroy the appropriateness of the certified unit and constituted only 'an expansion of the bargaining unit.'" *Id.* at 196. Although in this case we similarly have the addition of a group of unrepresented employees to a larger group of represented employees, we also have a critical omission—the lack of an analogue to the appropriate certified unit in *Spruce Up*, i.e., a preexisting appropriate unit comprising former Stockmar employees at the Chevron and Texaco locations. Those employees—extracted from a multiemployer unit which included not only the employees of the unit employers other than Stockmar, but also Stockmar employees at other locations which Irwin did not take over—did not clearly constitute an appropriate unit on their own. Because Irwin thus did not take over any identifiable appropriate unit, no presumption of union majority accompanied its hiring of these employees.

³On December 11, 1986, Irwin, asserting the absence of majority status, had refused to recognize the Union, although it agreed to the appropriateness of the employerwide unit. Pursuant to an unexpected notice given on December 22, 1986, Texaco replaced Irwin with another maintenance contractor on December 28. The Union filed an 8(a)(5) charge on January 28, 1987. There was no Regional determination as to that charge. Eventually Irwin entered into a non-Board settlement which provided for withdrawal of the charge and recognition of the Union.

⁴See *Stewart Granite Enterprises*, 255 NLRB 569, 573 (1981) ("[S]uccessorship obligations are not defeated by the mere fact that only a portion of a former union-represented operation is subject to the sale or transfer to a new owner, so long as the employees in the conveyed portion constitute a separate appropriate unit, and they comprise a majority of the unit under the new operation."); *Electrical Workers IUE v. NLRB*, 604 F.2d 689, 695 (D.C. Cir. 1979) ("A change in the size of a unit will not by itself defeat successorship obligations as long as the union maintains majority status and the acquired unit remains appropriate."); *NLRB v. Fabsteel Co.*, 587 F.2d 689, 695 (5th Cir. 1979) ("The Board, with court approval, has . . . found a bargaining obligation though the transfer in ownership results in a division of the bargaining unit into two or more separate units, where, as here, each unit is independently appropriate.") (Emphasis added.)

Therefore, although the new employerwide unit of Irwin's employees is clearly appropriate on traditional community-of-interest grounds, the majority status of the Union must be reexamined anew. *NLRB v. U.S. Banknote Corp.*, 541 F.2d 135, 139 (3d Cir. 1976). The parties can be found to have effected a lawful recognition only if there is affirmative evidence that the Union represented a majority of Irwin's employees on the date recognition was demanded. Because no such evidence exists in the record before us, we find the reciprocal 8(a)(2) and 8(b)(1)(A) violations as alleged.

CONCLUSIONS OF LAW

1. The Respondent Employer, Irwin Industries, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent Union, International Union of Petroleum and Industrial Workers, SIUNA, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By recognizing the Respondent Union on April 6, 1987, as the exclusive collective-bargaining representative of its refinery maintenance division employees, and by executing and maintaining a collective-bargaining agreement with the Respondent Union on and after May 15, 1987, the Respondent Employer has violated Section 8(a)(2) and (1) of the Act.

4. By maintaining and enforcing the union-security provision of the May 15, 1987 collective-bargaining agreement, the Respondent Employer has violated Section 8(a)(3) of the Act.

5. By threatening employees with loss of their jobs if they did not execute checkoff authorizations and by relying on authorizations executed as a result of those threats as a basis for checking off dues, the Respondent Employer has violated Section 8(a)(2) and (1) of the Act.

6. By using these coercively obtained authorizations as a basis for checking off dues before expiration of the 30-day grace period allowed by Section 8(a)(3) of the Act, the Respondent Employer has violated Section 8(a)(3), (2), and (1) of the Act.

7. By accepting recognition as the exclusive collective-bargaining representative of Respondent Employer's refinery maintenance department employees and by executing and maintaining the May 15, 1987 collective-bargaining agreement between it and the Respondent Employer, the Respondent Union has violated Section 8(b)(1)(A) of the Act.

8. By maintaining and enforcing the union-security provision of the May 15, 1987 collective-bargaining agreement, the Respondent Union has violated Section 8(b)(2) of the Act.

9. By accepting checked-off dues after being on notice that they had been deducted as a result of coerced

authorizations, the Respondent Union has violated Section 8(b)(1)(A) of the Act.

10. The above unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

11. The Respondents have not otherwise violated the Act.

ORDER

The National Labor Relations Board orders that

A. Respondent Irwin Industries, Inc., Long Beach, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing and bargaining with the International Union of Petroleum and Industrial Workers, SIUNA, AFL-CIO as the exclusive representative of its refinery maintenance department employees unless and until that labor organization is certified by the Board as the exclusive collective-bargaining representative of such employees pursuant to Section 9(c) of the Act.

(b) Giving effect to the May 15, 1987 collective-bargaining agreement executed by the Respondent Employer and the Respondent Union and any renewal, extension, or modification thereof unless and until the Respondent Union is certified as the collective-bargaining representative of such employees.

(c) Threatening to discharge or otherwise retaliate against employees who do not execute dues-checkoff authorizations, and deducting and paying over to the Respondent Union dues deducted pursuant to authorizations executed as a result of those threats.

(d) Requiring employees, through threats to force them to execute checkoff authorizations or to take any other action, to pay dues to the Respondent Union before the expiration of the 30-day grace period provided for in Section 8(a)(3) of the Act.

(e) Honoring payroll deduction authorization of union dues forms obtained from employees as a result of coercive statements by General Foreman Keith Crane or by any other supervisor as a result of the same or similar unlawful threats to employees.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold all recognition from the Respondent Union as the exclusive collective-bargaining representative of its refinery maintenance department employees unless and until it has been duly certified as the exclusive representative of such employees.

(b) Jointly and severally with the Respondent Union reimburse all employees for moneys illegally exacted

from them, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of reimbursement due under the terms of this Order.

(d) Post at its Long Beach, California office and at all other locations and jobsites where notices to refinery maintenance department employees are customarily posted, copies of the attached notice marked "Appendix A."⁵ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent Employer's authorized representative, shall be posted by the Respondent Employer immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Post at the same places and under the same conditions as in the preceding subparagraph signed copies of the Respondent Union's notice to employees and members marked "Appendix B."

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

B. Respondent International Union of Petroleum and Industrial Workers, SIUNA, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Accepting recognition as the exclusive collective-bargaining representative of the refinery maintenance division employees of the Respondent Employer unless and until it has been so certified by the National Labor Relations Board.

(b) Giving effect to the May 15, 1987 collective-bargaining agreement between the Respondent Employer and the Respondent Union or to any extension, renewal, or modification thereof.

(c) Accepting and retaining moneys deducted as dues from employees of the Respondent Employer with knowledge that such deductions are made pursuant to coercively obtained checkoff authorizations.

(d) In any like or related manner restraining or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(a) Disclaim recognition as the exclusive collective-bargaining representative of the refinery maintenance division employees of the Respondent Employer unless and until it has been so certified by the National Labor Relations Board.

(b) Jointly and severally with the Respondent Employer reimburse all employees for moneys illegally extracted from them, with interest computed in the manner prescribed in *New Horizons for the Retarded*, supra.

(c) Preserve and on request make available to the Board and its agents, for examination and copying, all membership, dues, and other records necessary to analyze the amount of reimbursement due under the terms of this Order.

(d) Post at its business offices and other places where notices to its members are customarily posted copies of the attached notice marked "Appendix B."⁶ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posed. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Furnish the Regional Director with signed copies of the notice for posting by the Respondent Employer at its facilities where notices to all employees are customarily posted. Copies of the notice, to be furnished by the Regional Director, shall be signed and forthwith returned to the Regional Director.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Union has taken to comply.

⁶ See fn. 5, supra.

APPENDIX A

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT recognize or contract with International Union of Petroleum and Industrial Workers, SIUNA, AFL-CIO as the exclusive bargaining representative of our refinery maintenance division employees unless and until it has been certified as such representative by the National Labor Relations Board.

WE WILL NOT maintain or give effect to our May 15, 1987 contract with the Petroleum Workers or to any renewal, extension, or modification thereof.

WE WILL NOT threaten to discharge or otherwise retaliate against employees who do not execute dues-checkoff authorizations and WE WILL NOT deduct and pay over to the Petroleum Workers dues deducted pursuant to authorizations executed as a result of those threats.

WE WILL NOT require employees, through threats to force them to execute checkoff authorizations or to take any other action, to pay dues to the Petroleum Workers before the expiration of the 30-day grace period provided for in Section 8(a)(3) of the Act.

WE WILL NOT honor payroll deduction authorization of union dues forms obtained from employees as a result of coercive statements by General Foreman Keith Crane or by any other supervisor as a result of the same or similar unlawful threats to employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights under Section 7 of the Act.

WE WILL withdraw and withhold all recognition from the Petroleum Workers as the collective-bargaining representative of our refinery maintenance division employees unless and until it has been certified as such by the National Labor Relations Board.

WE WILL, jointly and severally with the Petroleum Workers, reimburse you for moneys illegally exacted from you, with interest on the amounts owing.

IRWIN INDUSTRIES, INC.

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT accept recognition as the exclusive collective-bargaining representative of the refinery maintenance division employees of Irwin Industries, Inc., unless and until we have been so certified by the National Labor Relations Board.

WE WILL NOT give effect to the May 15, 1987 collective-bargaining agreement between Irwin Industries, Inc. and us or to any extension, renewal, or modification thereof.

WE WILL NOT accept and retain moneys deducted from your pay as dues where we have knowledge that such deductions are made pursuant to coercively obtained checkoff authorizations.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights under Section 7 of the Act.

WE WILL disclaim recognition as the exclusive collective-bargaining representative of the refinery maintenance division employees of Irwin Industries, Inc., unless and until we have been so certified by the National Labor Relations Board.

WE WILL, jointly and severally with Irwin Industries, Inc., reimburse you for moneys illegally exacted from you, with interest on the amounts owing.

INTERNATIONAL UNION OF PETROLEUM
AND INDUSTRIAL WORKERS, SIUNA
AFL-CIO

Neil A. Warheit, Esq., for the General Counsel.

James T. Winkler, Esq. (Atkinson, Andelson, Loya, Ruud & Romo), of San Bernardino, California, for the Respondent.

Henry M. Willis, Esq. (Schwartz, Steinsapir, Dohmann & Sommers), of Los Angeles, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM J. PANNIER III, Administrative Law Judge. I heard this case in Los Angeles, California, on December 6 and 7, 1988. On August 23, 1988, the Regional Director for Region 21 of the National Labor Relations Board (the Board), issued an order consolidating cases, consolidated complaint and notice of hearing, based on an unfair labor practice charge filed on May 26, 1987,¹ and amended on June 29, in Case 21-CA-25437, alleging violations of Section 8(a)(1), (2), and (3) of the National Labor Relations Act 29 U.S.C. § 151 et seq. (the Act); and, upon an unfair labor practice charge filed on June 22 in Case 21-CB-9938, alleging violations of Section 8(b)(1)(A) of the Act. All parties have been afforded full opportunity to appear, to introduce evidence, to examine and cross-examine witnesses, and to file briefs. Based upon the entire record, upon the briefs that were filed, and upon my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

At all times material, Irwin Industries, Inc. (Respondent Employer), has been a California corporation which operates a facility located at 2679 Redondo Avenue, Long Beach, California, and which has engaged, inter alia, in the business of maintaining and repairing refineries, petrochemical plants, and powerplants. In the course and conduct of those business operations, Respondent Employer annually performs services valued in excess of \$50,000 for businesses located within the State of California, each of which, in turn, annually purchases and receives goods and products valued in excess of \$50,000 directly from suppliers located outside the State of

¹ Unless stated otherwise, all dates occurred in 1987.

California. Therefore, I conclude that at all times material, Respondent Employer has been an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

At all times material, International Union of Petroleum and Industrial Workers, SIUNA, AFL-CIO (Respondent Union) has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

The issues in this case arise from the consolidation into a single bargaining unit of two groups of refinery maintenance employees. The first group consists of historically unrepresented ones employed by Respondent Employer at various refineries in and near Los Angeles County. The second encompasses refinery maintenance employees working at two Los Angeles County sites: at Texaco Oil Company's Carson/Wilmington refinery and at Chevron U.S.A. Inc.'s refinery in El Segundo. Prior to July 1986, Respondent Employer had been one of four refinery maintenance contractors at the Chevron facility. There is no evidence concerning the identity of the refinery maintenance contractor(s) at Texaco prior to July 1986, although Respondent Employer had been performing some maintenance work there, for the alkylation unit.

During July 1986, Texaco and Chevron each independently let for bid the maintenance work at its refinery. In both instances, Stockmar International, Inc. was declared the successful bidder. At that time, Stockman was one of the contractors doing refinery maintenance work at Chevron, although it did not employ a majority of the overall complement of maintenance workers employed by the four contractors who performed refinery maintenance work at the El Segundo refinery. Stockmar, also, was one of three contractors who were parties to a multiemployer collective-bargaining contract with Respondent Union. Upon being notified that it was the successful bidder, Stockmar began phasing in its own personnel at Texaco and Chevron so that it was performing all refinery maintenance work at the Carson/Wilmington and El Segundo refineries by early October 1986. In addition, its contract with Respondent Union was extended to encompass the maintenance workers at both refineries.

In December 10, 1986, Texaco and Chevron were each notified by Stockmar that it could not continue performing the refinery maintenance work at their refineries. Each of the petroleum companies contacted Respondent Employer which agreed to immediately replace Stockmar and which actually commenced performing maintenance work at both refineries on December 11, 1986. To do so, Respondent Employer used the same employees as had been employed by Stockmar on the preceding day. However, because of the manner in which Respondent Employer operates, all parties to this proceeding agree that the only appropriate bargaining unit since that date has been an employerwide one, embracing all refinery maintenance employees employed by Respondent Employer. On December 11, 1986, Respondent Union demanded recognition as the bargaining representative of the employees in such a unit.

Initially, Respondent Employer rebuffed that demand. However, after Respondent Union filed an unfair labor practice charge, alleging an unlawful refusal to bargain, Respondent Employer reexamined its position. Ultimately, it negotiated a non-Board settlement whereby the charge would be withdrawn in return for recognition of Respondent Union. That recognition was actually granted on April 6. By that time, Respondent Employer had ceased performing the maintenance work for Texaco at the Carson/Wilmington refinery. But, so far as can be ascertained from the employment figures provided at the hearing, at that time a majority of Respondent Employer's refinery maintenance workers were employed at the Chevron refinery in El Segundo, although less than a majority of the overall complement of Respondent Employer's maintenance employees were actual members of Respondent Union.

In essence, the General Counsel argues that because the represented employees at Texaco and Chevron did not constitute a separate appropriate unit—either in a single two-location unit or in separate single-location units—after Respondent Employer began employing them, therefore any prior bargaining history was obliterated and normal successorship principles cannot be applied, leaving Respondent Union in the position of having to reestablish its majority status *de novo* before Respondent Employer could lawfully recognize it as the employees' representative. Inasmuch as Respondents concede that no new organizing campaign had been conducted before April 6 and, further, that less than a majority of the unit employees were actual members of Respondent Union, it follows, urges the General Counsel, that the Act was violated when recognition was granted on that date to a representative of less than a majority of the refinery maintenance workers in the employer-wide unit. Conversely, Respondents argue that this case presents no more than a standard situation where there is a successor relationship accompanied by an expansion of the bargaining unit whereby represented and unrepresented employees are merged into a single consolidated unit. Since the represented employees outnumbered the unrepresented ones on the date of the demand for recognition, Respondents contend, Respondent Employer was obliged to recognize Respondent Union and, concomitantly, its ultimate decision to do so cannot form the basis for a conclusion that the Act has been violated.

Following negotiation of the collective-bargaining contract between Respondents, Respondent Employer announced to the formerly unrepresented employees that Respondent Union had become their bargaining representative and, further, described their obligations and some of the changes in their benefits under the contract. Based principally upon its allegation that recognition had unlawfully been extended to Respondent Union, the General Counsel contends that those remarks constituted unlawful threats and rendered unlawful aid, assistance and support to Respondent Union. Similarly, the General Counsel argues that certain statements by Respondent Union's officials constituted unlawful threats. Finally, the General Counsel argues that dues were unlawfully deducted from employees' paychecks pursuant to unlawfully obtained checkoff authorizations. Respondents dispute each of these allegations.

As set forth more fully *post*, I conclude that the only violations of the Act occurred in connection with the solicitation of checkoff authorizations and with the collection and accept-

ance of dues deducted pursuant to those authorizations. Subsequently, employees were told that they were not obliged to execute checkoff authorizations, but those announcements failed to satisfy the test for an effective repudiation, sufficient to preclude the need for a remedial order.

In all other respects, a preponderance of the evidence does not support the allegations that Respondents violated the Act. To the contrary, to conclude that Respondents had done so would necessitate reversal of settled precedents that have been established over a number of years in the area of successorship. From the viewpoint of the refinery maintenance employees at Texaco and Chevron on December 11, 1986, Respondent Employer was continuing the same employing entity as Stockmar. Where there is a consolidation into a single bargaining unit of represented and unrepresented employees, it is not necessary for the incumbent representative to reestablish *de novo* its support by a majority of the employees in the consolidated unit. Rather, the incumbent is entitled to continued representation so long as the number of represented employees outnumber those who previously had been unrepresented. That was the situation that had prevailed when Respondent Union demanded recognition on December 11, 1986. Shortly thereafter, Respondent Employer lost the refinery maintenance work at Texaco, but that was not objectively foreseeable on December 11, 1986, when its bargaining obligation arose, and that unforeseen subsequent event does not serve to obliterate the preexisting bargaining obligation. Moreover, although recognition was not granted until April 6, it was granted on that date in response to an unfair labor practice charge alleging that Respondent Employer had refused to observe a bargaining obligation already in existence and, consequently, was predicated upon and related back to the situation prevailing 4 months earlier. In any event, by April 6, the employees working at Chevron's El Segundo refinery outnumbered all other refinery maintenance workers employed by Respondent Employer. Finally, since Respondents established a lawful bargaining relationship and lawfully negotiated a contract, there is no basis for concluding that either of them violated the Act by announcing the existence of that relationship to employees and by describing the obligations and benefits embodied in that contract.

B. Evidence

In a sense, this is a story of a pea and three shells. The pea is the refinery maintenance workers employed at the Texaco Carson/Wilmington refinery and at the Chevron El Segundo refinery. The shells are the successive employers of those refinery maintenance employees. As noted above, four contractors performed the refinery maintenance work at Chevron prior to July 1986: Respondent Employer, Diversified, Pen West and Stockmar. Stockmar employed less than a majority of the refinery maintenance employees working there. It was the only one of the four contractors who had a bargaining relationship with Respondent Union, being one of three employers—the other two being Bay Western Industrial Maintenance, Inc. and Northwestern Industrial Maintenance, Inc.—who were parties to a multiemployer collective-bargaining contract with Respondent Union, effective from July 1, 1984, until June 30, 1987. The bargaining unit covered by that contract encompassed both industrial and refin-

ery maintenance employees. As does Respondent Employer, Stockmar employed workers in both categories.

In contrast to the situation at Chevron, no evidence was provided concerning the circumstances of the refinery maintenance work being performed at Texaco prior to July 1986. That is, no evidence was adduced regarding the identities of the contractors who performed the maintenance work there, although the evidence does show that Respondent Employer had been performing an unknown portion of that work, varying in amount over time. More important, no evidence was presented that would support a conclusion that Respondent Union had not been representing a majority, or at least some, of the refinery maintenance workers at the Carson/- Wilmington refinery prior to July 1986. Further, there is no evidence showing that less than a majority of the refinery maintenance employees working there were members of Respondent Union prior to that time.²

Stockmar became the second shell as a result of its successfully bids for performance of the maintenance work at Texaco's Carson/Wilmington³ and at Chevron's El Segundo refineries. Respondent Employer had submitted bids to perform the work at both locations, but in each instance its bid had been the runner-up to the one submitted by Stockmar. Because it phased in its operations at both locations, Stockmar did not commence performing all of the refinery maintenance work at the two refineries until October 1986. At some point, it applied its multiemployer collective-bargaining contract to its maintenance employees working at the two refineries, thereby extending recognition to Respondent Union as their bargaining representative. No evidence was presented that, at that time, Respondent Union had not represented a majority of the maintenance workers employed by Stockmar at each location. Nor was evidence presented that, before extending recognition to it, Stockmar had not verified the majority status of Respondent Union at both Texaco and Chevron.

The second shell was replaced by the third one on December 11, 1986. On the previous day, Respondent Employer was contacted by officials of Chevron and, then, by officials of Texaco. In both instances, the same message was conveyed: that Stockmar was unable to continue performing its maintenance contract and, as the runner-up in the bidding 5 months earlier for that work, that Respondent Employer was requested to start performing it. Chevron's request contemplated an ongoing arrangement for the work at the El Segundo refinery. However, Texaco's local officials lacked authority to enter into so expensive a contract as was contemplated by the replacement of Stockmar.

²At first blush, the absence of such evidence might appear not relevant to the issues posed by the complaint. However, as discussed in sec. III.C, *infra*, the General Counsel makes at least one argument rooted in the assertion that Respondent Union had not been representing refinery maintenance employees at Texaco and that those employees were not members of Respondent Union prior to Stockmar's assumption of the maintenance work at that refinery. Yet, the General Counsel is not free to rely on the absence of evidence to the contrary to support those assertions. Rather, in the context of this case, it was the General Counsel's burden to show that none of the maintenance workers at the Carson/Wilmington refinery had been represented and that none were members of Respondent Union prior to July 1986. "The burden of establishing every element of a violation under the Act is on the General Counsel." *Western Tug & Barge Corp.*, 207 NLRB 163 fn. 1 (1973).

³That bid did not encompass the maintenance work for the alkylation unit nor for the sulfur recovery plant. At both, Respondent Employer continued to perform the maintenance work.

Accordingly, Respondent Employer's officials were told that the maintenance contract for the Carson/Wilmington refinery again was going to have to be let for bid. But, according to Texaco's manager of maintenance, "that wouldn't transpire for ninety days, at least." In the meantime, as a stopgap measure, Texaco and Respondent Employer agreed that the latter's contract for the alkylation unit would be extended to the entire refinery.

Respondent Employer became the maintenance contractor for the Carson/Wilmington and El Segundo refineries on December 11, 1986. On that date, it employed 228 unrepresented employees at other refineries pursuant to preexisting maintenance contracts. It hired and employed all 193 maintenance employees who had been working for Stockmar at the El Segundo refinery and all 144 maintenance employees who had been working for Stockmar the previous day at the Carson/Wilmington refinery. The maintenance employees at these two refineries continued to be employed in the same job classifications and at the same rates of pay, doing the same work with the same tools and equipment as when Stockmar had been the maintenance contractor for Texaco and Chevron. Moreover, the same individuals continued to provide immediate supervision of those employees.⁴

While there was no change in the manner and method of maintenance work at Texaco and Chevron, Respondent Employer did merge operations at their sites into its overall labor relations structure. Thus, it assigned a code number to each newly hired maintenance employee and each of them was provided with a copy of the same employee handbook and safety manual as is given by Respondent Employer to all newly hired employees, regardless of work location. Further, the newly hired maintenance employees were subject to transfer to other sites where Respondent Employer is the maintenance contractor and, as time passed, several of them were transferred. Indeed, Respondent Employer's labor relations are highly centralized. All hiring is done at its Redondo Avenue main office. Site supervisors lack authority to fire employees. Whenever that course of action is desired by a site supervisor, or by site safety personnel in appropriate situations, the matter must be referred to the main office where a final determination is made. Moreover, based on conversations with clients, site supervision ascertains maintenance personnel requirements and, then, relates that information to the main office from which the necessary action is taken to transfer specific maintenance employees to or from various locations. All labor relations policies are formulated by main office personnel; none of these policies are formulated by site supervisors.

By letter to Respondent Employer's president, dated December 11, 1986, Respondent Union's International secretary-treasurer asserted, "that we represent the majority of your employees working in your refinery division," and demanded recognition as the bargaining representative of all those employees. However, prior to dispatch of that letter, no organizing campaign had been conducted among those employees. Nor is there evidence regarding the number of those

employees who may have been members of Respondent Union. Rather, the latter's representation claim was based exclusively on its belief that Respondent Employer had become a successor-employer to Stockmar at Chevron and Texaco and, further, on the fact that the represented employees at El Segundo and Carson/Wilmington outnumbered its unrepresented refinery maintenance employees on December 11, 1986.

Respondent Employer rejected the demand for recognition. As a result, on January 28 Respondent Union filed an unfair labor practice charge, docketed as Case 21-CA-25198, alleging that Respondent Employer was unlawfully refusing to recognize and bargain. By that time, Respondent Employer no longer possessed all of the pea. For, on December 22, 1986, Texaco unexpectedly gave notice that it had located another contractor to perform the maintenance work that had been taken over from Stockmar by Respondent Employer. Despite its protests concerning what it regarded as high-handed and perfidious treatment, Respondent Employer was obliged to cease performing that work 6 days later, on December 28, 1986.

Cessation of the Texaco maintenance work initially did not alter the fact that employees absorbed from Stockmar, now confined to Chevron's El Segundo refinery, were a majority of Respondent Employer's overall refinery maintenance complement. Thus, on Wednesday, January 7,⁵ it employed 225 maintenance employees at Chevron and 219 to 222 maintenance employees at all other locations. However, by the following Wednesday, January 14, an additional 281 maintenance employees had been hired and assigned to Shell Oil Company's refinery. Largely as a consequence of that fact, Respondent Employer employed a total of 714 to 717 refinery maintenance employees, of whom but 211 were employed at Chevron. During the succeeding weeks and months, refinery maintenance employees employed at Chevron continued to constitute a minority of Respondent Employer's overall refinery maintenance employee complement. For example, on January 28, when the charge in Case 21-CA-25198 was filed, 197 employees were working at Chevron, while 385 to 388 refinery maintenance employees were working elsewhere for Respondent Employer.

Not until April 1 did the maintenance complement at Chevron again constitute a majority of Respondent Employer's overall refinery maintenance complement: 207 employees at Chevron and 196 to 199 employees at all other locations. That majority proportion prevailed on the following Wednesday, April 8: of 462 to 465 refinery maintenance employees, 247 were working at Chevron. But by April 15, the number of maintenance employees assigned to all other refineries again outnumbered those working at Chevron. Yet, for all of the month of May, save for 1 week, and for every Wednesday from June 3, until October 7, maintenance employees working at Chevron outnumbered those employed by Respondent Employer at all other locations.

Meanwhile, confronted with the charge in Case 21-CA-25198 and advised by counsel that it might not prevail in a formal proceeding based on that charge, Respondent Employer decided to negotiate a settlement with Respondent

⁴In January, Respondent Employer added a site superintendent at Chevron. However, there is no evidence that it had contemplated making that addition at the time that it had begun performing maintenance work at the El Segundo refinery. To the contrary, only after it discerned that a supervisor with greater maturity was needed at that location did it decide to superimpose an added level of onsite supervision there.

⁵The most accurate employment figures for the various sites are those compiled on Wednesday of each week. On that day, Respondent Employer conducts a staff meeting at which it calculated the exact number of employees working at each refinery for which it has a maintenance contract.

Union. These negotiations were fruitful. As a result, Respondent Union requested withdrawal of its charge in Case 21-CA-25198, a request approved by the Regional Director on March 18. On April 6, Respondent Union was recognized formally as the representative of all refinery maintenance division employees of Respondent Employer. No organizing campaign had been conducted among those employees and no effort was made to ascertain if Respondent Union actually represented a majority of them. Rather, recognition was based exclusively on Respondent Employer's successorship status at Texaco and Chevron and, further, on the fact that Respondent Union had been representing a majority of the employees in the overall, employee-wide bargaining unit at the time that it had made its recognition demand on December 11, 1986.

On May 15, the parties entered into a collective-bargaining contract. That contract included a union-security clause whereby, as a condition of employment, refinery maintenance employees were required to become and remain members of Respondent Union after 30 days of employment by Respondent Employer or 30 days after the effective date of the contract, whichever occurred later. In addition, the contract contained certain provisions that constituted reductions in some benefits that unrepresented employees had been receiving from Respondent Employer. For example, the number of annual paid holidays was reduced and, further, overtime hours were excluded in calculating the number of hours needed to qualify for certain benefits. However, it is not disputed that, prior to recognizing Respondent Union, Respondent Employer had planned even more drastic reductions so that resulting lower costs would enhance its competitive position. Although Respondent Union was not able to totally prevent reductions, it was able to persuade Respondent Employer to agree to ones that were less severe.

Thereafter, Respondent Employer's officials began notifying formerly unrepresented employees that recognition had been granted to, and a contract had been negotiated with, Respondent Union. For example, on May 18, General Foreman Keith Crane reported to maintenance employees working at the Texaco Sulfur Recovery Plant that, during a meeting on the preceding Saturday, supervisors had been informed of those facts. Crane added that recognition would benefit Respondent Employer by making it easier to win other maintenance contracts and, also, recited at least some of the changes in benefits that would result from the terms of the contract. Similarly, at the Mobile Oil refinery, General Foreman Jerry Jacobs announced that Respondent Employer's employees were now represented by Respondent Union and that he would be providing them with literature pertaining to that subject. As had Crane, Jacobs described the benefits changes that would be occurring due to the terms of the newly negotiated contract. In separate conversations with then-employee Lauraine Smith, Jacobs and Foreman Steve Lloyd described the announcement of recognition that had been made at the Saturday supervisors' meeting. Lloyd related to Smith that when he had protested the recognition, he had been told to sit down and shut up. On May 20, Respondent Employer distributed a letter to all employees, announcing that, "we have reached a Successor Collective Bargaining Agreement with [Respondent Union]."

During his above-noted conversation with Lauraine Smith, Jacobs also mentioned that employees would be obliged to

join Respondent Union and pay dues to it, or they would be terminated. These conversations with Jacobs and Lloyd led Smith to contact Vice President of Operations John Donaldson. In a vague and ambiguous fashion, she testified that, during a telephone conversation, Donaldson had,

said that, I guess it would be the Union would determine if we get laid off or whatever, if we don't pay our Union dues as it is, within a Union, and that—I asked him about the benefits or something similar to that. I don't really remember right now, but he said that we wouldn't lose our benefits if we joined the Union.

Lauraine Smith was not the only employee with whom Donaldson spoke regarding Respondent Union. Director of Manpower Bill May had told the Sulfur Recovery Plant maintenance employees that Respondent Employer had been compelled to recognize Respondent Union as a result of a lawsuit arising from acquisition of the Stockmar contracts, that the employees would benefit as recognition would create more opportunities to obtain work for them in the field, and that the employees would have to join Respondent Union or they would be unable to continue working for Respondent Employer. Because of his perception that some of May's statements were inaccurate, Donaldson subsequently met with the same group of employees. He explained that Respondent Employer had not actually been sued, but that proceedings had been initiated before the Board because the unrepresented employees had been outnumbered by the represented ones hired at Texaco and Chevron. Given the cost of litigation and the lack of certainty by its attorneys about prevailing before the Board, continued Donaldson, Respondent Employer had decided to extend recognition to Respondent Union. He said that this course would be beneficial to the employees since Respondent Employer would be more competitive and, thus, better able to secure contracts for refinery maintenance work. Donaldson then described the changes in employee benefits resulting from the newly negotiated contract.

Welder/pipefitter James Ellison testified that, during the meeting, Donaldson had, "said that he would guaranty [sic] if we got [Respondent] Union decertified that within a year, we wouldn't get but three holidays." However, then-craftsman Nolan Detroit gave a more complete account of Donaldson's remarks in this regard, testifying that Donaldson had, "said if they didn't have a Union, we wouldn't have the holiday benefits at all. We'd have about three holidays and that was it. We wouldn't have no benefits at all."

Of greater consequence, in the context of the ultimate disposition of this case, were certain undisputed remarks that accompanied the subsequent distribution of checkoff authorization cards to employees. When handing Detroit a card, Crane said, "that if we didn't sign the card, we would be terminated." Similarly, as he handed out cards to employees during their lunchbreak at the Sulfur Recovery Plant, Crane said that they, "had to sign those cards in order—and join the Union in order to work for Irwin." When one of them inquired what would happen if the card was not signed, Crane retorted that, "It wasn't up to him, but if you didn't

sign the card that the Union could go to the company and say you don't work."⁶

Neither Detroit nor Lauraine Smith had been satisfied with the statements of Respondent Employer's officials. Following her telephone conversation with Donaldson, Smith telephoned Respondent Union's office and spoke with International Representative Jim Keith. He did not appear as a witness. Her description of the conversation was as vague and disjointed as was her account of what had been said to her by Donaldson. She testified that she, "asked him why we'd have to join the Union, also asked him if it was an open or closed shop," and that, "He said it was a closed shop." Asked pointedly if there had been, "any discussion about what would happen if you chose not to sign the card," Smith responded: "We would choose not to work for Irwin." At another point, she was asked if she had understood, as a result of her telephone conversation with Keith, that she had 30 days to join Respondent Union. She answered,

Yes, that's—he was, I believe—it might have been him telling me that the extension was up until like July 1st, because I made some kind of a statement I didn't know, you know, we had a deadline. Could have been him.

Asked next if Keith had told her that there had been an extension beyond July 1, she replied: "No, I don't think so. I don't remember if he did, but I don't believe he did."

On June 15, Detroit and Ellison went to Respondent Union's hall where they spoke with Secretary-Treasurer Thomas Walsh. In recounting the conversation that ensued, Ellison testified only that Detroit had said that he did not "like them taking his money," to which Walsh retorted that he was not taking Detroit's money, but rather that it was Respondent Employer that was doing go, and, further, that Detroit "had thirty days to withdraw from the Union, but he could not work for [Respondent Employer] after that, because it was a closed shop Union."

Detroit gave a more complete, but not necessarily internally consistent, account of what had been said that day. During direct examination, he testified that when he protested about paying dues, Walsh had responded that he had nothing to do with dues and that, at that time, Respondent Union had not seen any dues as it was only Respondent Employer that had been deducting them from the employees' paychecks. Detroit testified that when he asked what would happen if he canceled the checkoff authorizations, Walsh had replied that, "if we did, we'd be taken out," since "it was a closed Union and that we had to belong to that Union. If we did not, there would be a letter sent to the company requesting that we be terminated." However, during cross-examination, Detroit conceded that he also had been told by Walsh that he (Detroit), "had the alternative to come in and pay your dues instead of signing a card[.]"

This answer sparked the following question and answer:

Q. Okay. So, he said, "You got to either sign the card or come in and pay your dues, either."

⁶By contrast, crane operator Robert H. Smith testified, ultimately, that Jacobs had told the employees at Mobil that they had to begin paying dues by July 1 and that if they wanted to, they could sign a dues authorization card, but that, "he didn't give a damn if we signed them or not."

A. Yes, but at the same time, if you didn't pay the dues, you didn't work.

During redirect, Detroit reiterated that Walsh had said, "that if we canceled the card, we could not work because it was a closed Union. And that they would send a letter to the company, requesting that we be terminated." But during recross, he agreed that after having made that statement, Walsh had said that, as an alternative to signing a checkoff authorization card, Detroit had the right to come in and pay dues directly to Respondent Union.

Respondent Employer began deducting dues from employees' paychecks issued on June 12 for the pay period of June 7. However, during the week of July 20, after the charges in this case had been filed, Respondent Employer distributed, and posted on its bulletin boards, a notice advising the employees that they were not required to execute checkoff authorizations and that it would not take any action against employees who did not do so. The notice further stated that the collective-bargaining contract required that employees become members of Respondent Union following the 30-day grace period and that Respondent Union could request the discharge of employees who failed to comply with that requirement. However, continued the notice, employees were free to pay dues directly and checkoff was merely a convenience. The notice concluded with the following statements:

If you did not want to sign an authorization form, please contact the Personnel Department to revoke the document as soon as possible. Any monies improperly deducted by Irwin Industries, Inc. will be returned to you. Any obligations you have to the union for payment of dues will then be handled directly between you and the union.

If Irwin Industries, Inc. has not heard from you within 30 days, Irwin will assume absent unusual circumstances, that any dues deduction form that Irwin holds on your behalf remains with Irwin voluntarily.

However, there is no evidence that Respondent Employer made any further effort to reimburse employees whose dues had been deducted improperly.

Similarly, on September 1, Respondent Union issued its own notice, reciting that it was not true that employees had to execute checkoff authorizations, offering to cancel those signed by employees who did not want dues deducted, and pointing out that employees could pay dues directly, but that they could be fired if their dues were not paid after expiration of the 30-day grace period.

C. Analysis

The crucial issue in this case, from which resolution of most others follow, is the effect on Respondent Union's representation rights of the Chevron and Texaco refinery maintenance employees' transfer from a multiemployer bargaining unit, when they were employed by Stockmar, to an employer-wide unit, when they became employed by Respondent Employer, that included previously unrepresented employees, as well. The General Counsel argues that this transfer obliterated Respondent Union's representation rights and, accordingly, that Respondent Union was obliged to prove its majority status anew before it lawfully could accept recognition, and before Respondent Employer lawfully could extend

recognition to it, as the representative of the employees in the employer-wide unit. However, that argument is not consistent with the approach followed by the Board and by the courts, including by the Supreme Court. Rather, a two-stage analysis must be pursued, applying principles both of successorship and of merger or consolidation.

The first step in this case is to assess whether the change in employer so affected the job situations of the Chevron and Texaco refinery maintenance employees that it can be inferred that they likely would have changed their attitudes about being represented. "In the successorship situation the events must be viewed from the employees' perspective, i.e., whether their job situation has so changed that they would change their attitudes about being represented." *Derby Refining Co.*, 292 NLRB 1018 (1989). "This emphasis on the employees' perspective furthers the Act's policy of industrial peace." *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987). Here the General Counsel has failed to show that the change in employment, from Stockmar to Respondent Employer, was of such a nature that it likely changed the attitudes of the refinery maintenance employees at Chevron and Texaco and, accordingly, that it can be inferred that they would no longer want to be represented by Respondent Union.

For the most part, on December 11, 1986, those same employees continued to be employed by an employer operating in the same industry, at the same locations, performing the same work, in the same job classifications, at the same pay rates, using the same tools and equipment, and subject to immediate site supervision by the identical individuals who had supervised them when employed by Stockmar prior to that date. So far as the record discloses, any changes that did occur—such as being assigned Respondent Employer's code numbers and being provided with copies of Respondent Employer's employee handbook and safety manual—"were minor, and did not transform the essential nature of the [maintenance] operations." *NLRB v. South Harlan Coal Co.*, 844 F.2d 380 (6th Cir. 1988).

There is evidence that some maintenance employees at Chevron and Texaco were transferred to work at other locations on December 11, 1986. Similar transfers occurred during the days and months that followed. Yet, there is no evidence that such transfers are not common in the refinery maintenance industry nor, more specifically, that transfers of that type had not occurred when Stockmar had employed those employees. As pointed out in footnote 2, *supra*, it is the General Counsel who bears the burden of establishing every element needed to show that the bargaining relationship between Respondents was unlawfully established. In light of the foregoing factors establishing continuity of the job situations at El Segundo and at Carson/Wilmington before and after December 11, 1986, the General Counsel has failed to show that, from the perspective of the refinery maintenance employees, there had been a change in their jobs at those two locations—has failed to show that Respondent Employer was not a successor to Stockmar for the refinery maintenance employees who worked at Chevron and Texaco.

Of course, the employees at Chevron and Texaco were but a portion of the multiemployer unit of which Stockmar had been a member. However, "diminution in unit size is insufficient to rebut the presumption of continued majority status."

Nazareth Regional High School v. NLRB, 549 F.2d 873, 879 (2d Cir. 1979). Rather, a change in scale of operations must be extreme before it will alter a finding of successorship." *Mondovi Foods Corp.*, 235 NLRB 1080, 1082 (1978). In fact, to support that particular proposition, the Board pointed to a case in which a successor-relationship was established even though the new employer took over but one of 16 operations and only 18 of the seller's 800 production and maintenance employees. *Ranch-Way, Inc.*, 183 NLRB 1168, 1169 (1970). Here, the General Counsel has introduced no evidence regarding the number of employees covered by the multiemployer unit in which Stockmar's employees were included. Accordingly, there is no basis for concluding that the number of refinery maintenance employees at Chevron and Texaco was so much smaller than the total number of employees in the multiemployer unit that the disparity was extreme, thereby defeating the expectation that the transferred refinery maintenance employees desired continued representation by Respondent Union.

Instead, the General Counsel advances an argument that, he urges, effectively puts in issue the question of whether it can be said that the refinery maintenance employees at Chevron and Texaco ever had an interest in representation by Respondent Union. In so doing, he relies on *Atlantic Technical Services Corp.*, 202 NLRB 169 (1973), *affd.* 498 F.2d 680 (D.C. Cir. 1974), in which the Board was unwilling to conclude that successorship had been established, in part because of the circumstances under which the employees initially had come to be represented:

Lastly, the validity of the presumption of the continuing majority status of the Union is especially put in question where, as here, the portion of the former unit taken over by the new employer was originally accreted to the larger unit, and there is no showing that a separate and independent majority status in the smaller unit was established at the time of the accretion.

However, this was but one of four factors which formed the basis for the result reached in that case: (1) the transferred operation was but a small fraction of the overall operations of the putative predecessor which employed 1,100 employees in all of its operation, but only 41 employees in the transferred operation; (2) only 27 of the 41 employees employed by the putative successor had worked for the previous employer and, in consequence, the former unit "became doubly diluted" *ibid.*; and (3) the putative predecessor was a large nationwide firm, engaged in a multiplicity of operations and regulated under the Railway Labor Act, whereas the respondent was a small, recently established firm engaged primarily in performing a single operation and subject to regulation under the Act.

In this case, the evidence adduced shows that two of the four *Atlantic Technical Services* factors are not present. In addition, the General Counsel has failed to present evidence that would establish the existence of the other two factors. Respondent Employer and Stockmar are competing firms and, so far as the record discloses, both are engaged in the same operations. Certainly, both were engaged in refinery maintenance service, which is the operation involved in this proceeding. Moreover, Respondent Employer hired the entire work force of maintenance employees that Stockmar had

been employing at the Chevron and Texaco refineries prior to December 11, 1986. Accordingly, the factor of double dilution is not present here. Furthermore, as pointed out above, by not providing evidence of the number of employees encompassed by the multiemployer bargaining unit in which Stockmar's employees were included, the General Counsel has failed to provide evidence from which it can be concluded that there had been an "extreme" change in operations when Respondent Employer took over the maintenance work at Chevron and Texaco. "[S]uccessorship obligations are not defeated by the mere fact that only a portion of a former union-represented operation is subject to the sale or transfer to a new owner." *Stewart Granite Enterprises*, 255 NLRB 569, 573 (1981).

Nor is the record sufficient to support a finding that refinery maintenance employees at Chevron and Texaco were accreted to the multiemployer unit without a prior showing that, at that time, Respondent Union had represented a majority of them at each of those locations. It is clear that there was no representation election, leading to certification, among those employees. But, "a successor's obligation to bargain is not limited to a situation where the union in question has been recently certified." *Fall River Dyeing v. NLRB*, supra. "Voluntary recognition is a favored element of national labor policy." *NLRB v. Broadmoor Lumber Co.*, 578 F.2d 238, 241 (9th Cir. 1978). Here, other than showing that the Chevron- and Texaco-based employees had been accreted to that unit, there is no evidence whatsoever regarding the circumstances that generated the agreement for their accretion. Consequently, the General Counsel has failed to establish that there had not been a prior showing that Respondent Union had represented a majority of the refinery maintenance employees working at Chevron and Texaco prior to the time that those employees were accreted to the multiemployer unit.

Of course, Respondent Union had been serving as the representative of those employees for but a few months when Respondent Employer became their employer. Yet, the successorship doctrine is not limited to situations where the predecessor's bargaining relationship has existed for more than a minimum period. To do so would be to reduce to second-class status employees whose representation had not existed for a sufficient period of time to satisfy an arbitrary minimum standard. Employees in that category would be subjected "to the vagaries of an enterprise's transformation. This feeling is not conducive to industrial peace." *Fall River Dyeing Corp. v. NLRB*, supra. Indeed, such a result would be contrary to the more basic doctrine that requires a reasonable time to elapse before recognition can be withdrawn from a voluntarily recognized representative. *Keller Plastics Eastern*, 157 NLRB 583, 587 (1966). For, were a minimum time standard to be adopted, a successor would be permitted to accomplish that which the recognizing employer would not be allowed to do.

Furthermore, the General Counsel has adduced no evidence showing that, on December 11, 1986, objective factors were present that should have alerted Respondent Employer that a majority of the former Stockmar employees no longer desired representation by Respondent Union. Although then-unrepresented employees of Respondent Employer testified to their own dissatisfaction with representation by Respondent Union, not a single former Stockmar employee appeared

and so testified. In these circumstances, there is no basis for depriving Respondent Union of its representation rights, and the employees of their statutory right to representation, merely because of the relatively short bargaining history for refinery maintenance employees working at the Chevron and the Texaco refineries.

Since there is no basis for concluding that Respondent Employer was not the successor-employer of the former Stockmar maintenance employees, the next question is the effect of the undisputed fact that, following the change in employer, the refinery maintenance employees at Chevron and Texaco did not possess separate identity for unit purposes—that the only appropriate unit was an employer-wide one encompassing all refinery maintenance employees employed by Respondent Employer. In situations where represented and unrepresented employees are combined into a single unit, the Board has held that this constitutes a merger. Such a merger is treated as a normal expansion of the unit. The incumbent's representation rights are extended to the entire consolidated unit if the represented employees constitute a majority of the unit following the merger. "In fact the Board has effectively found valid accretions in cases involving approximately equal size groups even when the represented employees barely constituted a majority of the combined work force." *Central Sova Co.*, 281 NLRB 1308, 1309 (1986), enfd. per curiam 867 F.2d 1245 (10th Cir. 1988). Under this approach, as the Board pointed out in *Geo. V. Hamilton, Inc.*, 289 NLRB 1335 (1988):

the balance between the sometimes conflicting goals of (1) assuring employees their choice of whether and by whom to be represented, and (2) fostering established bargaining relationships, should be struck in that case in favor of the existing bargaining relationships covering the represented employees.

Since the parties agreed that Respondent Employer's represented and unrepresented refinery maintenance employees were merged into a single unit on and after December 11, 1986, the only viable issue is whether, "the employees in the represented group outnumber the employees in the unrepresented group." *Id.* at fn. 9.

Closely related to how the majority is calculated is the issue of when the majority is calculated. A successor's duty to bargain "is triggered only when the union has made a bargaining demand." *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987). That occurred here on December 11, 1986, the same date on which Respondent Employer commenced performing the maintenance work at the Chevron and Texaco refineries. To do so, it hired all of the employees who had been employed by Stockmar at the two refineries. Moreover, there is no evidence that Respondent Employer hired or assigned any additional employees to perform maintenance work at either refinery at that time. The General Counsel has not contended that Respondent Employer's maintenance complement at refineries where its employees worked was not substantial and representative on December 11, 1986. Nor is there evidence showing the maintenance complement at either refinery was not substantial and representative on that date. Consequently, it follows that the date on which Respondent Union's majority status should be calculated was December 11, 1986. *Id.*

Similarly, when a merger occurs, the determination of whether represented employees constitute a majority of the consolidated work force is made when the merger is completed. See *Harte & Co.*, 278 NLRB 947, 949 (1986). Here, the parties agree that, due to the nature of Respondent Employer's method of operation, the represented refinery maintenance employees at Chevron and Texaco were merged into a single, employerwide unit with Respondent Employer's unrepresented employees. There is no evidence that this was not true on December 11, 1986. That is, there is no evidence that Respondent Employer's operations were any different on that date than on later dates. Nor is there evidence that the employees at Chevron and Texaco were any the less integrated into the overall unit on that date than on later dates. To the contrary, Respondent Employer assigned code numbers to each of the former Stockmar employees and issued employee handbooks and safety manuals to each of them. Moreover, a few were transferred to other locations. Consequently, the merger of represented and unrepresented employees had been completed by December 11, 1986, the same date on which Respondent Employer employed substantial and representative complements of refinery maintenance employees and, also, the date on which Respondent Union demanded recognition as the representative of all refinery maintenance employees employed by Respondent Employer.

On that date, Respondent Employer employed a total of 565 refinery maintenance employees. Of that number, 337 were former Stockmar employees. Consequently, on December 11, 1986, a majority of Respondent Employer's refinery maintenance employees were represented employees. Therefore, under the foregoing principles, it had been obliged to recognize and bargain with Respondent Union as the representative of all refinery maintenance employees employed by Respondent Employer.

Of course, Respondent Employer ceased performing maintenance work at the Texaco refinery 17 days later, on December 28, 1986. Yet, this had not been anticipated on December 11, 1986, so far as the record discloses. To the contrary, as set forth in section III.B, *supra*, before it had begun performing maintenance work at the Carson/Wilmington refinery, Respondent Employer had been told, by Texaco officials, that it would be at least 90 days before the maintenance contract was let for bid. Further, as the runner-up to Stockmar in the bidding just 5 months earlier, there was every indication that Respondent Employer could become the successful bidder in a new round of bidding. Accordingly, viewed from the perspective of the date of Respondent Union's recognition demand, there was no objective basis for Respondents to believe that continued performance of the maintenance work at Texaco was in jeopardy, nor to believe that the maintenance work there likely would be of only brief duration. Moreover, as also set forth in section III.B, *supra*, even after culmination of maintenance work at Texaco's refinery, represented employees remained a majority of Respondent Employer's overall complement of refinery maintenance employees. Thus, on January 7, the first Wednesday for which reliable figures are available following termination of the maintenance work at Texaco, Respondent Employer employed 225 represented employees at Chevron and 219 to 222 refinery maintenance employees at its other locations. "In fact, the Board has effectively found valid accretions in

cases involving approximately equal size groups even when the represented employees barely constituted a majority of the combined work force." *Central Soya Co.*, *supra*.

As the comparative employment figures for succeeding weeks show, the proportion of represented to unrepresented employees fluctuated over time, with the latter becoming the majority by January 14 and remaining the majority until April 1, when the Chevron refinery maintenance employees again became a majority of Respondent Employer's overall complement of refinery maintenance employees. Thereafter, those employees remained the majority until October 7, except for brief periods during the latter half of April and during 1 week in May. Yet, that very fluctuation demonstrates the wisdom of a rule based on straightforward criteria: the date of demand, the date when a substantial and representative complement has been hired, the date on which a merger has been completed. In a case such as this, to delay determinations of bargaining obligations until there is absolute certainty concerning the proportion of represented to unrepresented employees would be to disregard, "the significant interest of employees in being represented as soon as possible." *Fall River Dyeing Corp. v. NLRB*, *supra*. Indeed, it might mean that the employees could never obtain representation where employment fluctuated weekly in a particular industry or in the ordinary course of business of a particular firm. Accordingly, the employment fluctuation during 1987 is not a basis for concluding that a determination concerning the propriety of recognition should be deferred to a date later than December 11, 1986.

Nor is that conclusion altered by the fact that recognition was not actually granted until April 6. In the first place, by that date, refinery maintenance employees at Chevron again outnumbered those employed by Respondent Employer at other locations. Beyond that, Respondent Employer chose to grant recognition to Respondent Union on the basis of an unfair labor practice charge alleging an unlawful refusal to have done so in December 1986, and based on its own counsel's advice of but a 50/50 chance of prevailing if Respondent Employer chose to contest that allegation. In fact, as the foregoing analysis demonstrates, counsel's advice was not without adequate basis. Respondent Employer was a successor to Stockmar at Chevron and Texaco. Further, the represented employees at those two locations outnumbered all other refinery maintenance employees employed by Respondent Employer when Respondent Union demanded recognition. As a result, in granting recognition, Respondent Employer did not contravene any policy of the Act, but rather promoted a favored element of national labor policy by voluntarily recognizing Respondent Union. *NLRB v. Broadmoor Lumber Co.*, *supra*.

In voluntarily settling the charge, Respondents promoted the Board's "policy of encouraging the peaceful, nonlitigious resolution of disputes." *Independent Stave Co.*, 287 NLRB 740 (1987). Although recognition was not actually granted, and accepted, until April 6, because it resolved allegedly unlawful conduct that had occurred on December 11, 1986, it related back to that date. To require Respondent Union to establish anew its majority status on April 6, in the context of settlement of a charge, would mean that no refusal to bargain could be settled without reestablishment of majority status by the representative to whom recognition had earlier arguably been unlawfully denied. Such a result hardly promotes the

policies of the Act. Thus, the majority status of Respondent Union on April 6 is of no consequence in the context of this case.

At first blush, this case appears to present a novel situation in that an employer employing unrepresented employees becomes the successor employer of a larger group of represented employees and, then, that employer's historically unrepresented employees are accreted to a bargaining unit based on the representation of the newly acquired group. That is, ordinarily, the situation posed is one where an employer with represented employees acquires a smaller group of unrepresented employees and they become represented by the bargaining agent with whom that employer already has a bargaining relationship.

Yet, the situation presented here is not unprecedented. In *Spruce Up Corp.*, 209 NLRB 194 (1974), enfd. per curiam 529 F.2d 516 (4th Cir. 1975), an employer with unrepresented employees became the successor employer of a much larger group of represented employees. In concluding that a bargaining relationship came into existence for the unrepresented and represented employees in a single unit, the Board pointed out that,

had the predecessor acquired the contract to operate these eight additional shops, we would have treated the addition of these like facilities and similarly classified employees as an accretion to the certified unit. It seems reasonable to apply the same doctrine to the successor.

Indeed, the underlying policy of ensuring industrial peace by fostering established bargaining relationships is no less applicable to the one situation than to the other. Nor, from the perspective of the represented employees, is there a difference between being employed continuously by the same employer and being employed successively by a predecessor and, then, by a successor. In both situations, the interests protected by the Act are the same and only a feat of "linguistic prestidigitation"—as Justice Brennan phrased it in *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750 (1988)—could find a meaningful distinction between them under the Act.

Therefore, a preponderance of the evidence does not support the General Counsel's allegation that Respondent Employer violated the Act by granting recognition to Respondent Union as the representative of the refinery maintenance employees. Nor did Respondent Union violate the Act by accepting that recognition. This, then, leaves for consideration the allegedly unlawful statements attributed to various officials of Respondents.

Since the Act was not violated by the extension and the acceptance of recognition, it was not unlawful for Respondents to inform the employees of those facts. Nor was it an unfair labor practice to describe to employees the changes in their employment terms resulting from the collective-bargaining contract negotiated by the parties. By the time that Respondents' officials had spoken to any of the employees, recognition had occurred and the contract already had been negotiated. Consequently, there was no causal connection between those events and any future activity protected by Section 7 of the Act in which the refinery maintenance employees might choose to engage. See, e.g., *Certified Industries*, 272 NLRB 1138 fn. 1 (1984). Rather, those statements to

employees constituted no more than descriptions of existing conditions—"statement[s] of fact protected by Section 8(c) of the Act." *Storall Mfg. Co.*, 275 NLRB 220 (1985).

Of course, such a causal connection does appear to have existed in the testimony of Ellison, who claimed that Donaldson had said that employees would get no more than three holidays and no benefits if they decertified Respondent Union, and, by implication, in that of Lauraine Smith, who testified that Donaldson had said that, "we wouldn't lose our benefits if we joined the Union." Yet, neither Ellison nor Smith appeared to be a reliable witness.

When he testified, it did not appear that Ellison remembered completely what had been said by Donaldson nor, for that matter, what had been said in his subsequent conversation with Walsh. This was best illustrated by comparing Ellison's brief descriptions of these two conversations with the more complete accounts of them furnished by Detroit, who had been present during both conversations. Further, Ellison's description of the words assertedly spoken by Donaldson was not corroborated by Detroit. Thus, while Ellison claimed that Donaldson had said that refinery maintenance employees would lose their benefits if they decertified Respondent Union, Detroit made no mention of decertification when he described Donaldson's words. Nor did Detroit relate that Donaldson had made any statements pertaining to other types of future employee action intended to terminate representation by Respondent Union. Similarly, Ellison testified that Walsh had said flatly that Detroit could not work for Respondent Employer if he "withdrew from the Union." But, Detroit acknowledged, ultimately, that Walsh had said only that employees could pay their dues directly, instead of having them checked off, and that discharge of Detroit would be sought only if he did not pay his dues at all, as opposed to paying them through the checkoff procedure. In sum, given Ellison's seeming uncertainty regarding his accounts of Donaldson's and Walsh's remarks, his sketchy and incomplete accounts of what those two officials had said, when compared to the more complete descriptions of Detroit, and the absence of corroboration by Detroit for the comments described by him, I do not credit Ellison's testimony about what assertedly had been said by Donaldson and by Walsh.

Nor do I credit Lauraine Smith's accounts of what purportedly had been said to her by Donaldson and, later, by International Representative Heath. As pointed out in section III.B, supra, her testimony concerning those two conversations was provided in a vague and disjointed fashion. She repeatedly acknowledged her lack of recollection regarding what had been said to her. For example, she prefaced her testimony about Donaldson's purported statement—regarding employees not losing benefits if they joined Respondent Union—with the prefatory comment, "I don't really remember right now." Her lack of certainty was further illustrated by her resort to qualifying words such as "believe," "Could have been," "might" and "think" when describing what Keith purportedly had said to her during their telephone conversation. Given her demeanor while testifying and her admissions of uncertainty regarding the words actually spoken, I conclude that her testimony is too unreliable to provide a basis for concluding that Donaldson impliedly threatened that employees would lose benefits if they did not join Respondent Union.

The General Counsel's arguments are not enhanced by the evidence that Respondent Employer's officials told employees that they would benefit as a result of recognition of Respondent Union, nor by statements that benefits would have been reduced even further had Respondent Union not been serving as their bargaining representative. Regarding the latter, as pointed out in section III,B, *supra*, it is uncontroverted that Respondent Employer had planned to make reductions in employees' benefits. But, ultimately, those reductions had been less severe than planned due to Respondent Union's efforts through negotiations. By the time that statements about that situation had been made to employees, the contract existed and the reductions were a fact. Consequently, statements that benefits would have been reduced even further without Respondent Union were ones of fact about events that already had occurred, rather than statements concerning events that might occur in response to possible future protected conduct by refinery maintenance employees.

In a like vein, no unfair labor practices occurred when employees were told that they would benefit from recognition of Respondent Union because Respondent Employer's competitive position would be enhanced and, consequently, it might be able to secure additional refinery maintenance contracts. There is no evidence that this had been Respondent Employer's purpose for recognizing Respondent Union. To the contrary, the former had resisted granting recognition to the latter for 4 months and had done so only when confronted with an unfair labor practice proceeding that its attorneys predicted could well be lost. Nor are the accounts of what had been said in this regard sufficient to support the conclusion that supervisors portrayed recognition of Respondent Union as having been motivated by an intention to improve Respondent Employer's competitive position. Rather, taken in context, the statements appear to portray no more than an incidental consequence of recognition, voiced in an effort to minimize objections of formerly unrepresented employees to the lawful recognition of Respondent Union. At best, those statements were opinions protected by Section 8(c) of the Act.

Nor is the General Counsel's position strengthened by the remarks to employees that Respondent Employer had been obliged by law to recognize Respondent Union. Those remarks were not inaccurate, given the principles of law pertaining to successor and merger bargaining obligations set forth *supra*. Accordingly, they were, at best, statements of fact or, at least, opinions. In either instance, they were protected by Section 8(c) of the Act. Similarly, the Act was not violated when Lloyd related to Lauraine Smith that he had been told, during the course of a supervisory meeting, to sit down and shut up when he objected to recognition of Respondent Union. Lloyd did not claim that, in doing so, he had been objecting to recognition of Respondent Union because it was somehow unlawful. Rather, he simply objected to recognizing Respondent Union. Inasmuch as it was not unlawful for Respondent Employer to have done so, there is no basis for concluding that Lloyd inferentially was relating to an employee that he had protested commission of an unfair labor practice, but had been silenced by his employer for doing so.

A contrary conclusion is warranted with respect to General Foreman Crane's undisputed statements to the Sulfur Recovery Plant refinery maintenance employee: that checkoff au-

thorization cards had to be signed in order to work for Respondent Employer and, in addition, that if the employees did not sign them, Respondent Union could insist that those employees not be allowed to work. "An employee has a Section 7 right to refuse to sign a checkoff authorization as a method of fulfilling his membership obligation under a lawful union-security agreement." *IBC Housing Corp.*, 245 NLRB 1281, 1283 (1979). Consequently, by telling employees that their jobs would, or could, be lost if they declined to sign checkoff authorizations, Crane unlawfully required employees to execute dues-checkoff authorizations in favor of Respondent Union, thereby violating Section 8(a)(2) and (1) of the Act. Furthermore, not only were dues deducted pursuant to those coerced authorizations, but they were deducted as early as June 12 from paychecks for the pay period of June 7. By doing the latter, Respondent Employer also deprived its refinery maintenance employees of their 30-day contractual grace period to decide whether or not to join Respondent Union. By this conduct, Respondent Employer violated Section 8(a)(3), (2), and (1) of the Act.

Of course, as set forth in section III,B, *supra*, ultimately Respondents each issued notices advising employees that they were not required to have their dues checked off and that they were free to elect to pay dues directly to Respondent Union. However, those notices do not serve as effective repudiations of the unfair labor practices committed by Respondent Employer, under the standards enunciated in *Passavant Memorial Hospital*, 237 NLRB 138 (1978). Respondent Employer did not issue its notice until the week of July 20 and Respondent Union's notice was not issued until September 1. Yet, Crane's remarks had been made approximately 6 weeks before the earlier of the notices and over 30 days had elapsed between commencement of actual dues checkoff and issuance of that notice. Accordingly, it can hardly be argued that the notices were timely in relation to commission of the unfair labor practices. Furthermore, there is no evidence that the prematurely checked off dues were returned to the formerly unrepresented employees from whose pay the deductions had been made. Since there is no evidence that those employees had been charged an initiation fee to join Respondent Union, those formerly unrepresented employees were entitled to have the prematurely deducted dues returned to them. See, e.g., *Campbell Soup Co.*, 152 NLRB 1645 (1965), *enfd.* 378 F.2d 259 (9th Cir. 1967), and *Mode O'Day Co.*, 290 NLRB 1234 (1988). There is no evidence that this was done and, accordingly, it cannot be said that those employees have received the full remedy to which they are entitled. Therefore, Respondents' notices did not serve to effectively repudiate the unfair labor practices that I conclude have been committed.

Unlike Respondent Employer, there is no credible evidence that Respondent Union's officials had made unlawful threats to employees regarding what would happen if they did not execute checkoff authorizations. True, uncontradicted was Lauraine Smith's testimony that International Representative Heath had said that employees who chose not to sign checkoff authorizations "would choose not to work for [Respondent Employer]." Yet, "where the testimony of a disinterested witness is not directly contradicted, but such testimony is clouded with uncertainty, the trier of fact is not bound to accept it." *Woods v. U.S.*, 724 F.2d 1444, 1452 (9th Cir. 1984). Similarly, "the Board may decline to credit

the testimony of interested witnesses even though such testimony is not contradicted.” *Plasterers Local 394 (Burnham Bros.)*, 207 NLRB 147 fn. 2 (1973). As set forth above, Lauraine Smith was not a reliable witness, because she did not appear to remember accurately the words spoken to her by Respondents’ officials. Indeed, several illustrations of her lack of precise recall occurred in connection with her attempt to describe what Heath had said during the very telephone conversation in which he assertedly made the above-quoted remark. Therefore, I do not credit her testimony that Heath said that employees who declined to sign checkoff authorizations would be choosing not to work for Respondent Employer.

Similarly, I do not credit Ellison and Detroit’s testimony that Secretary-Treasurer Walsh had said that if they withdrew their checkoff authorization, they would not be allowed to work for Respondent Employer. As concluded *supra*, Ellison was not a reliable witness and I do not credit his accounts of statements that he attributed to Respondents’ officials. Initially, Detroit also claimed that Walsh had said that dues had to be paid through checkoff if employees wished to keep their jobs. However, as described in section III.B, *supra*, during cross- and recross-examinations, when his attention was focused on Walsh’s specific remarks, Detroit agreed that Walsh had said that direct payment to Respondent Union would be an acceptable alternative method of paying dues. More significantly, Detroit acknowledged that Walsh had said that discharge of employees would be sought if no dues were paid at all, as opposed to if they were paid in some fashion other than being checked off.

In sum, a preponderance of the credible evidence does not support the allegations that Respondent Union’s officials made any threats of adverse consequences to employees if they did not execute checkoff authorization cards as a means of paying their dues. However, Ellison’s and Detroit’s meeting with Walsh, as well as Lauraine Smith’s telephone conversation with Heath, clearly did put Respondent Union on notice that at least some of Respondent Employer’s employees were being compelled to execute checkoff authorizations. Further, despite what Walsh may have said to Detroit and Ellison about Respondent Union not having seen any dues at that point in time, Respondent Union did not contend that it had not ultimately received the dues that Respondent Employer had checked off from employees’ paychecks beginning in June. Inasmuch as Respondent Union was aware of what had occurred and benefitted from receipt of dues checked off pursuant to coerced checkoff authorizations, I conclude that by not acting to prevent dues from being checked off pursuant to coerced authorizations and by not returning dues that were prematurely collected from employ-

ees, Respondent Union violated Section 8(b)(1)(A) of the Act. *Campbell Soup Co.*, *supra*.

CONCLUSIONS OF LAW

By threatening that employees would lose their jobs if they did not execute checkoff authorizations and by relying on authorizations executed as a result of those threats as a basis for checking off dues, Irwin Industries, Inc. committed unfair labor practices in violation of Section 8(a)(2) and (1) of the Act. Moreover, by using those coercively obtained authorizations as the basis for checking off dues before expiration of the 30-day grace period allowed by Section 8(a)(3) of the Act, it also violated 8(a)(3), (2), and (1) of the Act. Furthermore, by accepting checked off dues that it was on notice had been deducted as a result of coerced authorizations, International Union of Petroleum and Industrial Workers, SIUNA, AFL-CIO committed unfair labor practices in violation of Section 8(b)(1)(A) of the Act. These unfair labor practices affected commerce within the meaning of Section 2(6) and (7) of the Act. However, neither Irwin Industries, Inc. nor International Union of Petroleum and Industrial Workers, SIUNA, AFL-CIO violated the Act in any other manner alleged in the complaint.

REMEDY

Having found that Irwin Industries, Inc. and International Union of Petroleum and Industrial Workers, SIUNA, AFL-CIO engaged in certain unfair labor practices, I shall recommend that they be ordered to cease and desist therefrom. In addition, each of them shall be ordered to take certain affirmative action to effectuate the policies of the Act. In this regard, since there is no evidence that initiation fees had to be paid to join International Union of Petroleum and Industrial Workers, SIUNA, AFL-CIO, it and Irwin Industries, Inc., jointly and severally, shall be ordered to reimburse to employees dues collected for periods prior to expiration of the 30-day contractual grace period and, further, that all payroll deduction authorization of union dues forms obtained as a result of coercive statements by General Foreman Keith Crane, or by any other supervisors as a result of the same or similar unlawful threats, shall not be honored. See *Campbell Soup Co.*, *supra*; *Mode O’Day Co.*, *supra*. Interest shall be paid on the amounts owing as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).⁷

[Recommended Order omitted from publication.]

⁷ Under *New Horizons*, interest is computed at the “short-term Federal rate” for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.